

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v.

Criminal No. 2:16cr73

JERROD TAWAN JOHNSON,

Defendant.

MEMORANDUM OPINION

On April 18, 2017, this criminal action came before the Court for Defendant's sentencing hearing. At such hearing, the Court addressed, in detail and on the record, whether a prior Virginia state-court robbery conviction qualified as a "crime of violence" as defined by U.S.S.G. §§ 4B1.1 and 4B1.2, otherwise known as the "Career Offender" Guideline. More specifically, the Court addressed whether a Virginia common law robbery conviction¹ qualified as the enumerated/generic crime of "robbery" as set forth in § 4B1.2(a)(2) of the 2016 Guidelines Manual. Acknowledging the Fourth Circuit's recent opinion in United States v. Winston, 850 F.3d 677 (4th Cir. 2017),² this

¹ See Ali v. Com., 280 Va. 665, 668, 701 S.E.2d 64, 66 (2010) (explaining that "[r]obbery is a common law crime in Virginia" defined as "the taking, with intent to steal, of the personal property of another, from his person or in his presence, against his will, by violence or intimidation"; further noting that the requisite violence "need only be slight").

² Winston held that because the "minimum conduct necessary to sustain a conviction for Virginia common law robbery" does not require the use of "violent force," such offense does not qualify as a "violent felony" under the "force clause" of the Armed Career Criminal Act. Winston, 850 F.3d at 685.

Court nevertheless concluded that Virginia common law robbery falls within the generic, contemporary definition of "robbery," and thus, a prior Virginia robbery conviction qualifies as a predicate offense under U.S.S.G. § 4B1.2(a)(2). See United States v. Hinton, No. 4:15cr26, 2016 WL 632447, at *3 (E.D.N.C. Feb. 17, 2016) (reaching a similar conclusion regarding North Carolina common law robbery); United States v. Graves, No. 1:15cr158, 2016 WL 5934205, at *8-*9 (M.D. Pa. Oct. 12, 2016) (reaching a similar conclusion regarding North Carolina common law robbery after the Fourth Circuit concluded in United States v. Gardner, 823 F.3d 793, 803 (4th Cir. 2016) that North Carolina common law robbery does not require the use of "violent force"). This Court's analysis on this issue, made orally at sentencing, is reflected in a transcript excerpt that is filed on the docket in this case at ECF No. 37.

The Clerk is REQUESTED to send a copy of this Memorandum Opinion memorializing this Court's sentencing ruling to counsel for the Defendant and to the Assistant United States Attorney in Norfolk, Virginia.

/s/ 

Mark S. Davis
United States District Judge

Norfolk, Virginia
May 4, 2017